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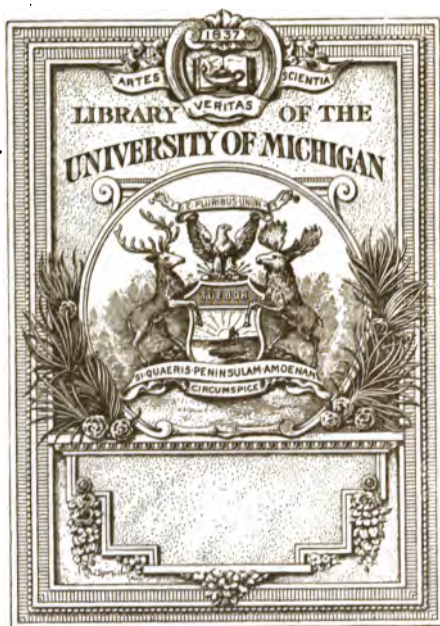
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# THE FEDERAL TRADE COMMISSION

*And the Regulation of Business under  
the Federal Trade Commission  
and Clayton Laws*

*Explanatory Comments by*

RUSH C. BUTLER and CORNELIUS LYNDE  
Of Cassoday, Butler, Lamb & Foster  
Chicago, Illinois.

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## **EXPLANATORY.**

The purpose of this pamphlet is to present in convenient form the Federal laws pertaining to monopolies and restraint of competition, particularly the new Federal Trade Commission and Clayton laws, together with explanatory comments designed to give a practical interpretation of them to business men. No comment is made on the labor sections of the Clayton law. An unusually full index of the laws has also been made a part of the pamphlet.

**Rush C. Butler.**  
**Cornelius Lynde.**

**Chicago, January 4, 1915.**





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## **COMMENTS.**

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### **CONDITIONS LEADING UP TO THE ENACTMENT OF THE FEDERAL TRADE COMMISSION LAW AND THE CLAYTON LAW.**

Notwithstanding the comprehensive character of the Sherman Anti-trust law and indeed because of its general terms there has been continual agitation for additional legislation with two main considerations in view: first, that the interpretation of the Sherman law should be made fairly certain and that business men should be afforded means of knowing with reasonable certainty in advance whether or not the law applied to a given state of facts; second, that the law should be made to deal more effectively with monopoly in its incipency, or in other words with practices tending to create monopoly. Objection was also made that with regard to certain methods or practices the Sherman law was not sufficiently specific, and finally that court decrees when entered were not always effective in securing the relief that was sought. It may be assumed that it was the concurrence of Congress in these conclusions as to the operation of the Sherman law which lead to the passage of the Federal Trade Commission and Clayton laws.

Even in its most recent decisions<sup>1</sup> the Supreme Court has announced no definite standard from which

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1.—In *Standard Oil Co. vs. United States*, 221 U. S. 1, the Supreme Court says (p. 68): "The merely generic enumeration which the statute makes of the acts to which it refers and the absence of any definition of restraint of trade as used in the statute leaves room for but one

the legality or illegality of any particular action can be determined. That this doubt is well founded is shown by the reasoning of two trial Courts in recent cases, both of which had before them for interpretation the rule laid down by the Supreme Court in the Standard Oil and Tobacco cases. In *United States v. Hamburg-American Steamship Company*, 216 Fed. 971, and in *United States v. International Harvester Company*, 214 Fed. 987, each trial Court interprets these decisions to mean that only such restraints of trade as are unreasonable are forbidden by the Sherman law. But the two Courts diverge widely in applying the rule. In the Harvester case a majority of the Court says (p. 993):

"While the evidence shows some instances of attempted oppression of the American trade by the International and the America Companies, such cases are sporadic, and in general their treatment of their smaller competitors has been fair and just, and if the International and America Companies were not in themselves unlawful there is nothing in the history of the expanding of the lines of manufacture, so as to make an all the year round business, that could be condemned.

"The real question is whether the combination of the companies was illegal in the beginning, or became so with the addition subsequently made."

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conclusion, which is, that it was expressly designed not to unduly limit the application of the act by precise definition, but while clearly fixing a standard, that is, by defining the ulterior boundaries which could not be transgressed with impunity, to leave it to be determined by the light of reason, guided by the principles of law and the duty to apply and enforce the public policy embodied in the statute, in every given case whether any particular act or contract was within the contemplation of the statute."

And in the case of the *United States vs. American Tobacco Co.*, 221 U. S. 106, the Supreme Court says (p. 180): "Coming then, to apply to the case before us the act as interpreted in the Standard Oil and previous cases, all the difficulties suggested by the mere form in which the assailed transactions are clothed become of no moment. This follows because, although it was held in the Standard Oil case that, giving to

And the Court decided that the combination was illegal in the beginning.

In the Shipping Trust case the Court says that the main subject matter of the controversy is the controlling of transportation so as to allot proportionate shares of it to the different defendants who are in the combination. Then the Court concludes (p. 974):

"There is nothing to add to the elaborate presentation of all sides of the controversy, \* \* \* and we find it most persuasive to the conclusion that in view of the peculiarities of ocean transportation, the method adopted by the defendants—if purged of its obnoxious feature, the 'fighting' ship—is a reasonable one, which, so far from restraining trade, really fosters and protects it, by giving it a stability which insures more satisfactory public service for all concerned."

In the Harvester case the Court practically eliminated from consideration the results which flowed from the combination, whether good or evil (and the Court in fact found the results not to be evil), and based its decision upon its finding that the combination of the companies was illegal in the beginning.

Quite to the contrary of what the Court did in the Harvester case, the Court in the Shipping Trust case ignored any consideration of the question as to

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the statute a reasonable construction, the words 'restraint of trade' did not embrace all those normal and usual contracts essential to individual freedom, and the right to make which was necessary in order that the course of trade might be free, yet, as a result of the reasonable construction which was affixed to the statute, it was pointed out that the generic designation of the 1st and 2d sections of the law, when taken together, embraced every conceivable act which could possibly come within the spirit or purpose of the prohibitions of the law, without regard to the garb in which such acts were clothed. That is to say, it was held that, in view of the general language of the statute and the public policy which it manifested, there was no possibility of frustrating that policy by resorting to any disguise or subterfuge of form, since resort to reason rendered it impossible to escape by any indirection the prohibition of the statute."

whether the combination at its inception was legal or illegal, but considered only the results of the combination.

Both the Harvester and the Shipping Trust cases will be passed upon later by the Supreme Court when some of the existing conflict of ideas as to the meaning of the Sherman law will no doubt be removed.

### **PURPOSE OF THE TWO NEW LAWS.<sup>2</sup>**

It is the apparent purpose of the new laws to establish guides for business, to afford relief from the condition of uncertainty that has existed, to restrain the development of trusts in their inception, and to assist the Courts in effecting dissolution of any such corporations or associations found to exist in violation of the law.

The Federal Trade Commission law provided for the establishment of governmental machinery for the interpretation and enforcement of its own provisions, of the Sherman law and of any other laws affecting the regulation of business. In addition to creating this machinery, the control of which was vested in the Federal Trade Commission, this law established a new legislative standard in declaring that "unfair methods of competition in commerce are hereby declared unlawful." The Sherman law was aimed only at contracts, combinations and conspiracies in restraint of trade, and monopolies and attempts to monopolize, but did not specifically condemn unfair *methods* of competition. The phrase "unfair *methods* of competition" is new in the law. Unfair competi-

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2.—Two laws were passed. The Federal Trade Commission law received the approval of the President on September 26, 1914, and the Clayton law on October 15, 1914.

tion is an old phrase but its meaning has been narrowly limited by the Courts in some decisions.<sup>3</sup>

In establishing the legislative standard declaring unfair *methods* of competition unlawful Congress supplemented the rule of the Sherman law and added substantially to the protection afforded to business by the court decisions referred to. The purpose of Congress was to inhibit in their inception those methods which if allowed to continue unchecked or unregulated, would produce the evils to the public which the Sherman law was designed to prevent.

The Clayton law is commonly known as the Supplemental Anti-trust law and is amendatory of the Sherman law. It established new legislative standards by condemning certain price discriminations, lease or sale contracts known as tying contracts, ownership of stock by one corporation in another, and interlocking directors, officers or employees. These new standards are not in conflict with or in limitation of the standard established in the Trade Commission law. They condemn practices upon which Congress desired to place its stamp of special disapproval, although they might be comprehended within the inhibition of the Trade Commission law against unfair methods of competition.

It is to be noted that in adopting this new rule of public policy Congress has safeguarded the rights of corporations and persons against whom charges have

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3.—Unfair competition was held to be misrepresentation of the character or brand of goods, attempting to obtain or obtaining trade secrets in violation of the rights of the owners thereof, and similar practices. *Howe Scale Co. v. Wyckoff, Seamans & Benedict*, 198 U. S. 118, 140; *Coats v. Merrick Thread Co.*, 149 U. S. 561; *Fischer v. Blank*, 188 N. Y. 244, 252; 88 N. E. 1040, 1041; *Rathbone Sard & Co. v. Champion Steel Range Co.*, 189 Fed. 26, 30; *Eastman Kodak Co. v. Reichenbach*, 79 Hun. 183, 194; *Little v. Gallus*, 88 N. Y. Supp. 487, 490.

been or are to be made. The Trade Commission cannot file complaint unless the proceeding appears to be in the *public interest*. Opportunity for hearing is given. The orders of the Commission are not self-enforcing. There is no penalty for failure to obey them. Opportunity to review the orders in the Courts by any or all parties to Commission proceedings is provided for and the Commission can only enforce its orders after Court proceedings for that purpose. It is doubtful whether there is any private right of action for alleged violations of the prohibition against unfair methods of competition until after the Commission has passed upon the facts in question. The inquisitorial powers of the Commission are not effective as against persons but only as against corporations.

No new crimes are defined or created in the Trade Commission law, except such as concern officers or employees of the Commission. Penalties, of course, are provided for persons who fail to appear as witnesses or produce evidence or who wilfully falsify, mutilate or destroy records.

Formerly the Department of Justice alone was vested with authority to enforce the public policy of the Sherman law both by proceedings in equity and by criminal prosecutions,<sup>4</sup> but the *ex parte* character of the proceedings prior to actually starting the cases in the Courts hampered the government and greatly and unnecessarily annoyed those under attack. The new machinery provides what promises to be substantial relief from these conditions.

The large body of reports and rulings to be published by the Trade Commission will soon be of material assistance to business men in ascertaining the application of these laws to the different lines

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4.—State of Minnesota vs. Northern Securities Company et al., 194 U. S. 48 at page 71.



of business. Like the decisions of the Interstate Commerce Commission, the decisions of the Trade Commission will come from one body and will undoubtedly be consistent in their interpretation and elucidation of the statutes.

That the new laws as they now stand are perfect will not be claimed. In a later portion of this discussion we call attention to some probable defects that may call for amendment.

### **FEDERAL TRADE COMMISSION LAW AND CLAYTON LAW COMPARED.**

It would have been possible to combine the provisions of the Trade Commission and Clayton laws in one enactment. Legislative expediency possibly suggested two laws instead of one, and there is some substantial basis for two separate laws. The Trade Commission law is general in its scope, declaring unfair methods of competition unlawful, and creating the Commission to determine the facts and enforce the rule. But the Commission may act only when it believes a proceeding would be in the *public interest*. This is one of the distinguishing characteristics of the Trade Commission law. In establishing the rule against unfair methods of competition and placing its interpretation with the Commission and Courts, Congress did not relinquish the right further to legislate on the subject or to declare specific acts unlawful. Contemporaneously with its consideration of the measures ultimately enacted into the Trade Commission law, Congress had under consideration and subsequently by only a few days passed the Clayton law in which it declared price discrimination, tying contracts, stock ownership by one corporation in another, and interlocking directors, officers or em-

ployees, to be unlawful, subject to certain limitations. In declaring them unlawful it bound the Trade Commission and the Courts so to regard them. Congress, by declaring them unlawful, relieved the Trade Commission of the duty of determining whether or not they constitute unfair methods of competition. They are condemned as they are, whether unfair methods of competition or not. Congress apparently deemed the wrongs occasioned by them so common and serious as to justify special legislation. It enacted that private persons suffering injury to their business or property by reason of such wrongs should be entitled to recover threefold damages in actions based thereon. The Trade Commission law contains no such provision. No action for damages, threefold or otherwise, is authorized therein against one found to have violated its provisions. That Congress intended substantially to differentiate between the Trade Commission law and the Clayton law is apparent from the fact that in defining "Anti-trust laws" in both of its new enactments Congress omitted the Trade Commission law from the definition.

### **INHIBITION OF THE TRADE COMMISSION LAW.**

*"Unfair Methods of Competition in Commerce Are  
Hereby Declared Unlawful."*

This declaration of Congress is the backbone of the Trade Commission law. It is a new legislative standard—the declaration of a new Federal policy. It is universal in its application to persons, partnerships or corporations doing business in interstate or foreign commerce, but no power for its enforcement is given as against banks and common carriers. It

is not limited by definition. Indeed, Congress considered whether or not it should define the words and declined to adopt amendments to the reports of the committees attempting to make such definition. The reason undoubtedly was that to enumerate would be to weaken and offer opportunities for evasion. Large numbers of well known practices might be specifically listed by way of definition but the ingenuity of man could easily circumvent any catalogue of specific acts.

From the fact that the Trade Commission, whose duty it is to enforce this new standard of business conduct, is authorized to do so only when it shall first determine that a proceeding will be in the public interest, it is plain that Congress intended to prevent the use of only such methods of competition in interstate commerce as will have a harmful effect upon the public.

### **INHIBITIONS OF THE CLAYTON LAW.**

Under section 11 of the Clayton law the Trade Commission cannot inquire whether a proceeding to enforce the inhibitions of the Clayton law will be in the public interest, but must act if the law has been violated.

#### **1. Price Discrimination.**

Section 2 of the Clayton law makes certain discriminations in price between different purchasers of commodities unlawful, and section 11 gives the Trade Commission, Interstate Commerce Commission and Federal Reserve Board authority to enforce the provisions of section 2 if and where applicable to ordinary business corporations, common carriers and ✓

banks respectively. Common carriers and banks do not ordinarily deal in commodities which "are sold for use, consumption or resale," and seem plainly not intended to be regulated by this section. This same Congress has created an elaborate machinery to regulate the dealings of banks in exchange, which is an additional reason why this section seems not to apply to banks or banking. Probably only ordinary commercial operations are intended to be covered by section 2. Where a bank or common carrier engages in merchandising either directly or indirectly the Interstate Commerce Commission or the Reserve Board would have jurisdiction to enforce this section. But in practical application this section will seldom if ever be invoked against banks or common carriers.

The language used shows that business is not intended to be unduly restricted. Differences in price are permitted because of differences in grade, quality, or quantity of the commodity sold, or differences in the cost of selling, or the cost of transportation. And finally aside from all these exceptions discrimination in price is permitted without any of the foregoing causes, if made in good faith to meet competition. And merchants are permitted if acting in good faith to choose their own customers.

The section applies only to price discrimination which substantially lessens competition or tends to create a monopoly.

## **2. Tying or Conditional Contracts.**

It is probable that section 3 was passed as a result of the agitation against the practice of certain large concerns, by which in contracts of sale or lease of patented appliances they customarily inserted conditions tying up their customers so that they would be

unable to purchase from competitors. Hence it is usually referred to as the "tying clause" section. It makes unlawful the insertion of a condition in a contract of sale or lease of goods, wares or merchandise, patented or unpatented, in interstate commerce, which condition binds the lessee or purchaser not to use the goods of a competitor of the lessor or seller. But such contracts are made unlawful only where the effect thereof is substantially to lessen competition or to tend to create a monopoly. The question to be determined is largely one of fact.

The Interstate Commerce Commission and the Federal Reserve Board are specifically given the power by section 11 of the Clayton law to enforce this section as to common carriers and banks respectively. But the section applies only to merchandising, to "the sale or lease of goods, wares, and merchandise for use, resale or consumption." And plainly in the normal course of their operations carriers and banks do not perform acts to which this section could apply.

### **3. Stock Ownership by One Corporation in Another.**

The inhibitions against stock ownership apply to corporations only.

The first paragraph of section 7 provides that no "corporation engaged in commerce" shall acquire directly or indirectly the whole or any part of the stock of another corporation engaged also in commerce, where the effect thereof would be substantially to lessen competition between the corporation owning the stock and the corporation whose stock is so acquired, or to restrain commerce or tend to create a monopoly.

The second paragraph of the section is directed against so-called "holding corporations" whether

engaged in commerce or not. It provides that "no corporation" shall acquire capital stock of two or more corporations engaged in commerce where the effect of such acquisition or the use of the stock by voting of proxies or otherwise may be substantially to lessen competition between such corporations or any of them whose stock is so acquired, or to restrain commerce, or tend to create a monopoly. This applies to banks, common carriers and all other corporations.

The section is not applicable to the purchase of stock by a corporation for investment only, where there is no bringing about or attempting to bring about a substantial lessening of competition.

The section states that its provisions are not intended to prevent a corporation from forming subsidiary corporations for the actual carrying on of its immediate lawful business or the natural and legitimate branches or extensions thereof, or from owning or holding all or part of the stock of such subsidiary corporations when the effect thereof is not substantially to lessen competition.

The application of the stock ownership provisions to common carriers is discussed under the heading "Common Carriers."

The provisions of the section are not to be held to affect or impair any existing lawful stock ownership of one corporation in another, nor shall they authorize or make lawful anything made illegal by the Anti-trust laws, nor exempt any person from the penal provisions thereof or the civil remedies therein provided.

Broad as are the prohibitions of section 7 against stock ownership by corporations, ownership by one or more persons of any part or all of the capital

stock of competing corporations is not therein condemned.

#### 4. Interlocking Directors.

Section 8 condemns interlocking of officers, directors or employees of banks, common carriers and other corporations subject to certain limitations which differ in their application to the different kinds of corporations affected thereby.

##### (a) AS TO BANKS.

Interlocking provisions extend to officers, directors or employees thereof and not to directors only as in the case of corporations other than banks and common carriers.

The provisions of the first and second paragraph of section 8 are ambiguous and when read in connection with the fourth paragraph of the section are still more difficult of interpretation. The evident purpose of Congress was to prevent interlocking in institutions of large resources. In order certainly to accomplish the desired result Congress applied its regulations from two points of view. In the first place it forbade after two years from the date of the approval of the act interlocking between national banks wherever located if one of them has deposits, capital, surplus and undivided profits aggregating more than \$5,000,000, and also forbade interlocking between any private banker or state bank having deposits, capital, surplus and undivided profits aggregating more than \$5,000,000 and any national bank of whatever size wherever located. Secondly, apparently more as a matter of precaution than necessity, Congress provided that there shall be no interlocking

whatever in a city of more than 200,000 inhabitants between any national bank of whatever size and any other national bank or state bank or private banker located in the same place. The two provisions referred to appear in the same section, though in separate paragraphs, and the second paragraph contains two provisos—the first to the effect that the section shall not apply to mutual savings bank not having shares of capital stock, and the second to the effect that interlocking is permitted as between not more than two banks of the kinds described where the entire capital stock of one is owned by the stockholders in the other. The second paragraph basing interlocking provisions on population does not in terms permit the interlocking for two years after the approval of the law as does the first paragraph. But we believe, reading the law as a whole, that the second paragraph is in substance a portion of the first paragraph and should be construed as a part thereof, and therefore its provisions likewise do not become effective for two years.

The provisions of the fourth paragraph of the section are to the effect that when any person elected as a director or officer, or selected as an employee of any bank or corporation is eligible to the position at the time of his election or employment, his eligibility shall not be affected by reason of any change in the affairs of such bank or other corporation until the expiration of one year from the date of his election or employment.<sup>5</sup>

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5.—Opinion construing the two year provisions of the section:

Department of Justice,

Office of the Solicitor of the Treasury,

Washington, D. C., November 24, 1914.

The Federal Reserve Board,

Gentlemen:

Referring to the so-called "Clayton Law" approved October 15, 1914,



These provisions tend still further to add to the difficulty of correctly interpreting the section as a whole.

(b) AS TO CORPORATIONS OTHER THAN BANKS AND  
COMMON CARRIERS.

The interlocking here forbidden applies to directors only, and not to officers and employees also as in the case of banks.

The section provides that after two years from the approval of the act no person shall be a director in two or more corporations any one of which has capital, surplus and undivided profits aggregating more than \$1,000,000 engaged in whole or in part in commerce, if such corporations are or shall have been by virtue of their business and location competitors, so that the elimination of competition by agreement between them would violate any of the provisions of the Anti-trust laws.

We have discussed under "Common Carriers" the application of this section to certain kinds of common

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regarding monopolies, etc., I am requested to advise you whether the words "from and after two years from the date of the approval of" the said act, apply to paragraph 2 of Section 8.

In other words, Mr. Robert W. Webb, Vice-President of the Minneapolis Trust Company, inquires of your Board by letter dated the 20th instant, whether a director of the company is eligible to serve as a director of a national bank not having common ownership of stock, until the expiration of two years after the approval of the act. And if so, may he not further serve for such time thereafter as would constitute the unexpired part of one year from the date of his election?" \* \* \*

(Here follow the pertinent provisions of the law.) \* \* \*

From the facts stated and in accordance with my interpretation of the statute, I am of the opinion that the two years limitation mentioned in the first paragraph of section 8 of the act applies also to the second paragraph, and that a director of the said trust company is eligible to serve as a director of a national bank not having common ownership of stock, until the expiration of two years after the approval of the act; and that by authority of the last paragraph above quoted, he is eligible to further serve for such time thereafter as constitutes the unexpired part of one year from the date of election.

carriers not subject to the act to regulate commerce prior to the amendments of 1906. Our conclusion there drawn is that express, sleeping car, pipe line, and telephone and telegraph companies are subject to the absolute inhibition against interlocking directors.

(c) AS TO COMMON CARRIERS.

There is no provision in the law against interlocking directors as between common carriers by railroad. As to interlocking directors of pipe lines, sleeping car, express, telephone and telegraph and other companies see comments on "Common Carriers."

Interlocking between common carriers and other corporations is discussed also under the heading "Common Carriers."

**TRADE COMMISSION'S FUNCTIONS.**

By the provisions of the Trade Commission law Congress has created the Federal Trade Commission

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I am of the opinion also that the statute will fairly bear the liberal interpretation that it was intended that paragraphs 1 and 2 should be read together in order that the existing arrangements might not be subject to sudden and inconvenient changes; and that the first paragraph as to eligibility to serve as a director in two institutions whose deposits, capital, etc., exceed \$5,000,000, be modified by the second in the case of institutions the stock of one of which is wholly owned by the stockholders in the other.

I am further of the opinion that it was the intention of Congress that the first two paragraphs of section 8 as to banks whose deposits, capital, surplus, etc., aggregate more than \$5,000,000, and as to all banks in cities of over 200,000 population, the provisions as to time of the act taking effect, mutual savings banks, common stock ownership and Federal reserve banks, should apply alike.

The letter of Mr. Webb is herewith returned.

Very respectfully,

(Signed)

F. A. REEVE,  
Acting Solicitor.

(Comment: Released for publication December 3, 1914.)

which is designed to enforce certain rules laid down therein and also in the Clayton law, particularly as to corporations other than banks and common carriers. The Commission in its organization is very similar to and yet fundamentally unlike the Interstate Commerce Commission and is given in many respects like powers. It is designed to take the place of the Bureau of Corporations and is authorized to carry on all pending investigations of the Bureau and to exercise as to such the powers of the Bureau.

The Commission has two main functions which are quite different in their nature. The first is to investigate in very general and also specific ways corporations engaged in interstate commerce, except banks and common carriers. Its powers of investigation apparently do not extend to persons or partnerships. Its power to investigate corporations, however, includes power to investigate their relations with partnerships, associations or individuals. The second is to determine after hearing on complaint filed by the Commission whether particular persons, partnerships or corporations have violated any of the provisions of the two laws.

### **1. Inquisitorial Functions.**

The Commission by section 6 of the law is given general power to gather and compile information and to investigate the organization, business, conduct, practices and management of any corporation engaged in commerce, excepting banks and common carriers, and the relations of such corporation to individuals, associations and partnerships. This is a very broad grant of power, but this power or duty to investigate could probably only be exercised for the better enforcement of the two new laws and the

Sherman law. The Commission is given the right to require annual or special reports in writing from corporations, either under oath or not as it may determine. These reports are limited to the same subjects as to which its general power of investigation is given. The Commission may not require information as to the financial condition of the corporation reporting. Penalties are imposed for failure to file the required reports.

The Commission is given power to investigate upon its own initiative or upon the application of the Attorney General the manner in which any final decree entered against a corporation in a suit brought by the government under the Anti-trust laws has been or is being carried out and to report its findings and recommendations; also to investigate and report the facts relating to any alleged violations of the Anti-trust laws upon the request of the President or either house of Congress.

The Commission is authorized upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the Anti-trust laws. This investigation may be conducted before or after legal proceedings against the corporation. Any corporation alleged to be violating the Anti-trust laws may thus be given the opportunity of readjusting its business before the burdens or penalties resulting from legal proceedings are imposed, and thereby maintain its organization and thereafter conduct its business in accordance with the law.

The law provides for the publication of annual and special reports of the Commission and of its decisions and also gives the Commission power to make public within its discretion information obtained by it, *except trade secrets and names of customers.*

Penalties are provided for employees of the Commission making public information without authority.

In the provision as to annual reports and elsewhere in the law it is suggested that the Commission will classify corporations and it is given the power to require reports or other information from particular classes only. Under this provision no doubt large numbers of corporations will be relieved from filing reports, thus saving expense and annoyance; and the Commission will not be uselessly engaged in handling large quantities of reports in which it may well know in advance it will have no possible interest. The Commission may, however, require reports at any time from any corporation subject to its jurisdiction.

The Commission is given power to investigate trade conditions with foreign countries where associations or combinations among the traders in such countries may affect the foreign trade of the United States.

Except as above stated, we find no language in the law indicating that the Trade Commission either should or should not hold public hearings or otherwise make public any information obtained by it, in the exercise of its strictly inquisitorial powers.

The Bureau of Corporations has not conducted its investigations by public hearings and it seems to be entirely optional with the Trade Commission as to whether it shall do so or not. The Interstate Commerce Commission employs publicity in connection with many though not all of its investigations.

## **2. Judicial Functions.**

The other form of power vested in the Trade Commission is the power to hold hearings and enter orders. It is to be noted that complaints may not be

filed by any person or corporation, but only by the Commission itself when it has reason to believe that the law has been violated. This applies to proceedings under both the Trade Commission law and the Clayton law.

There is a further limitation upon the power of the Commission which only applies to the filing of complaints by it against the use of unfair methods of competition. Such complaints may be filed only when the Commission believes that the proceeding "would be to the interest of the public." The clear intention of Congress in imposing this limitation was that strictly private controversies and matters of purely personal importance to the parties concerned should not be made the subject of complaint by the Commission. The action of the Commission in the matter of holding hearings and entering orders in pursuance thereof may only be invoked when the rights involved rise above the merely personal or selfish interests that may be affected and become of such importance and so far-reaching in their nature as to make them in fact of interest to the public.

The legal questions involved in the grant of power to hold hearings and enter orders are different from any that have been presented under the provisions of the Acts to Regulate Commerce conferring like power upon the Interstate Commerce Commission. These questions will not be discussed here, but this phase of the subject can be dismissed with the suggestion that in order to uphold the grant of such power to the Trade Commission it is doubtful whether that body can be held to be a department of the legislative branch of the government, but rather that the Trade Commission in exercising such power must be held to be acting as a judicial body.

The Commission may also act as a master in

chancery to report an appropriate form of decree in any suit in equity brought by the Attorney General under the Anti-trust laws.

**COMMISSION PROCEDURE UNDER SECTION 5 OF THE TRADE COMMISSION LAW AND AS DEFINED IN THE CLAYTON LAW FOR THE ENFORCEMENT OF SECTIONS 2, 3, 7 AND 8 THEREOF.**

Section 5 of the Trade Commission law and section 11 of the Clayton law lay down the manner in which the Trade Commission, and also the Interstate Commerce Commission and Federal Reserve Board as to the Clayton law, may enforce the various specific rules of law elsewhere defined in the two laws. These two sections are uniform in their provisions except as to the words in italics in the following excerpt from section 5 of the Trade Commission law:

"That when the Commission shall have reason to believe that any person, partnership or corporation has been or is using any unfair method of competition, *and it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public*, the Commission shall issue and serve upon the person, partnership or corporation a complaint stating the charges and containing the notice of hearing."

This provision as to the necessity of the public interest appearing is not found in section 11 of the Clayton law. The Clayton law therefore throws upon the Commission or Board the duty of acting if the Commission or Board has reason to believe a violation of the law has occurred. As elsewhere indicated in the discussion, this probably shows that Congress conclusively decided that violations of the Clayton law were matters affecting the public interest, while

it did not conclusively decide that violations of the rule against unfair methods of competition were necessarily matters of public interest. As we explain elsewhere, the Trade Commission under section 5, or either the Trade Commission, Interstate Commerce Commission or Federal Reserve Board under section 11, in enforcing the provisions of those sections and conducting hearings, exercises functions essentially judicial in their nature. This provision as to the public interest in section 5 of the Trade Commission law gives to the Trade Commission some measure of discretion not given by the other law. This discretion may not be exercised in an arbitrary manner. Mandamus would lie against the Commission if it arbitrarily refused to assume jurisdiction in a proper case.<sup>6</sup> Since, however, section 5 expressly fails to provide for the filing of complaints by others than the Commission and leaves to the Commission to determine the manner in which it obtains information as to any alleged violation of law, it is difficult to understand how it could be made to appear that it was the duty of the Trade Commission to act in any given case. Under the power given to it by section 6 of the Trade Commission law to make rules and regulations, the Commission undoubtedly will promulgate rules as to the manner in which it may obtain information to serve as the basis of action by the Commission under this section.

Both sections 5 and 11 provide that proceedings shall be instituted by the filing of a complaint which shall be issued by the Commission or Board and served on the defendant and shall contain notice of hearing not less than 30 days after service. The defendant shall then have the right to appear and

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6.—Interstate Commerce Commission vs. Humboldt Steamship Company, 224 U. S. 474 at page 484.



show cause why an order should not be entered requiring it to cease and desist from the violation of law charged in the complaint. This provision of the statute must comprehend a hearing judicial in its nature with all the attendant requirements of due process. Intervention by any person or corporation is expressly permitted upon cause shown. Obviously, where the principal issue is the lessening or restraint of competition or the effect of improper competition, there must always be other parties interested in the issue than the particular defendant or defendants to the Commission's or Board's complaint. The testimony must be reduced to writing and filed in the office of the Commission or Board and if it is of opinion the law has been violated it shall make a report in writing stating its findings as to the facts, which findings are conclusive, if supported by evidence, in the Court reviewing the Commission's or Board's orders.

If a violation of law is found on such hearing, section 5 of the Trade Commission law provides that an order shall be entered requiring the defendant to "cease and desist from using such method of competition." It is to be observed that the Commission is not given definite authority to determine the *time* or *manner* in which the order is to be carried out. Section 11 of the Clayton law provides that if on the hearing violations are found an order shall be entered requiring the defendant to "cease and desist from such violations and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections 7 and 8 of this act, if any there be, *in the manner and within the time fixed by said order.*" It is thus seen that there is a difference as to the kind of order comprehended by the two sections. However, in actual practice the functions of the Commis-

sion, because its power is essentially judicial under both sections, will probably be exercised to about the same extent in one case as in the other.

The Commission or Board has the power upon such notice and in such manner as it may deem proper either under section 5 or section 11, to modify or set aside in whole or in part any report or order issued under either of the sections, until a transcript of the record before the Commission or Board shall have been filed in the Circuit Court of Appeals of the United States. The filing of such record, together with a petition by the Commission or Board or bill for relief by a party to the Commission's or Board's order, is the beginning of proceedings in the Circuit Court of Appeals of the United States to enforce or review such order. If the defendant in proceedings before the Commission or Board fails or neglects to obey its order while in effect, the Commission or Board is given the power to apply to the Circuit Court of Appeals for the enforcement of its order and is required to certify and file a transcript of the entire record, including all the testimony taken and its report and order. The Court shall thereupon cause notice to be served upon the defendant and shall have jurisdiction of the proceedings and power to make and enter on the pleadings, testimony and proceedings set forth in such transcript a decree "affirming, modifying or setting aside the order." This provision is the same in both sections. Obviously, the Circuit Court of Appeals is expressly permitted to place itself in the position of a reviewing Commission or Board and is authorized to act in exactly the same way as the Commission or Board, although to act only upon the proceedings before the Commission or Board. This definition of the authority of the Circuit Court of Appeals therefore must mean that

the Commission or Board under either section shall exercise an essentially judicial function, because it would be unconstitutional to delegate to the Circuit Court of Appeals authority other than judicial in its nature.<sup>7</sup>

The findings of the Commission or Board as to the facts, if supported by the testimony, shall be conclusive. Upon cause shown to the Court it may order the taking of additional evidence but such evidence must be taken before the Commission or Board and be brought before the Court in such manner as the Court may provide. The Commission or Board is authorized to modify its findings or make new findings by reason of the additional evidence and to file such modified or new findings which, if supported by testimony, shall be conclusive. The Commission or Board is also authorized to recommend the modification or setting aside of its original order upon the return of such additional evidence, if it shall see fit. These provisions probably mean that no testimony can be taken in the Circuit Court of Appeals in a proceeding to review orders entered under either of these sections. It is probable the Court may hear evidence to determine whether or not proper cause exists for the taking of additional testimony before the Commission or Board.

Any defendant subject to an order entered under either of these sections may obtain a review in the Circuit Court of Appeals by filing a written petition praying that the order be set aside, and copy of the petition shall be forthwith served upon the Commission or Board which is thereupon required to serve and file in the Court a transcript of the record in the same way as if the Commission or Board itself were

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7.—Note to Hayburn's Case, 2 Dallas 409; United States vs. Yale Todd, 18 Howard 52, note.

the petitioning party. The jurisdiction of the Court to review the Commission's or Board's order upon such application is the same as in suits instituted by the Commission or Board seeking enforcement of its order. The jurisdiction of the Circuit Court of Appeals to enforce, set aside or modify orders of the Commission or Board entered under either of these two sections is exclusive and review of the judgments of the Court may be obtained in the Supreme Court upon *certiorari* as provided in section 240 of the Judicial Code. It is to be noted that both statutes would make such review applicable only to judgments entered by the Circuit Court of Appeals in suits instituted therein by the Commission or Board, and that review in the Supreme Court would seem not to be authorized in cases instituted in the Circuit Court of Appeals by a party seeking to set aside an order of the Commission or Board. It is true, however, that review could be obtained by *certiorari* under the Judicial Code without express authority in these sections, unless the law be interpreted to mean that Congress intended that the ruling of the Circuit Court of Appeals should be final in cases instituted therein by corporations or persons.

Both sections provide that proceedings in the Circuit Court of Appeals shall be given precedence and in every way expedited, and also provide that no order of the Commission or Board, or judgment of the Court to enforce the same "shall in any wise relieve or absolve any person, partnership or corporation from any liability under the Anti-trust acts." This provision is found in both sections.

Both sections provide the manner in which service of orders or other processes of the Commission or Board may be made, either (a) by delivering copy to the defendant or member of the partnership, if such,

or the president, secretary or other executive officer or director of a corporation; (b) by leaving copy at the principal office or place of business of any partnership or corporation; or (c) by sending a copy by registered mail to such principal office. Verified return by the person serving or leaving the same, or the registered postoffice receipt shall be proof of such service.

### **BANKS.**

We have discussed substantially all of the provisions of the laws concerning banks under the heading "Inhibitions of the Clayton law." General provisions concerning the power of the Federal Reserve Board to enforce compliance with the Trade Commission and Clayton laws are also discussed under the heading "Commission Procedure," etc. However, we think it proper briefly to repeat here that the prohibitions of sections 2 and 3 against price discrimination and tying clause contracts do not apply to the normal operations of banks, and that the only provisions of the Clayton law which specifically apply to banks are those against unlawful stock ownership and interlocking directors, officers or employees.

It is to be noted that the provisions against interlocking apply to a national bank as one party in each case, which indicates that Congress had in mind in making these enactments not only its powers under the commerce clause of the constitution,<sup>8</sup> but also its powers to establish and regulate national banks.

While unfair methods of competition are declared unlawful without limitation as to persons or corpora-

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8.—Are banks engaged in commerce? See *Nathan vs. Louisiana*, 8 Howard 73; *New York Life Insurance Company vs. Deer Lodge County*, 231 U. S. 495.

tions against whom the rule shall operate, there is no provision in the Trade Commission law for the enforcement of this rule as against banks or common carriers. Even if it be conceded that banks are engaged in commerce within the meaning of that word as used in the law, it would seem by reason of the failure to provide for the enforcement of this rule against banks that there was serious doubt as to whether Congress intended the rule to apply to the banking business.

Banks are not subject to investigation concerning their organization, business, conduct, practices, management or relation to other corporations, individuals, associations or partnerships, nor can they be required to file reports with the Trade Commission. If incorporated banks are involved in any proceeding under the Anti-trust acts or in any alleged violations thereof, they are subject to investigation in those particulars.

### **COMMON CARRIERS.**

The two laws contain several quite unrelated provisions affecting common carriers but it has seemed best to collect and discuss them all under one title.

#### **1. Under the Trade Commission Law.**

The rule against unfair methods of competition does not apply to common carriers as they are specially excepted therefrom. The only manner in which this law applies to common carriers is in the operation of the Commission's inquisitorial powers. Illegal combinations may be investigated. The Commission may also investigate the manner in which decrees rendered in suits by the government for viola-

tions of the Anti-trust laws have been or are being enforced. Upon application of the Attorney General the Commission is given the power to investigate alleged violations of the Anti-trust laws and recommend the readjustment of the business of any corporation violating such laws.

Common carriers are not subject to investigation concerning their organization, business, conduct, practices, management or relation to other corporations, individuals, associations or partnerships, nor can they be required to file reports with the Trade Commission.

## 2. Under the Clayton Law.

In discussing price discrimination and tying contracts, we have already stated that we do not believe either section applies to common carriers or at least to the normal operations of common carriers. The intention of these sections is plainly to regulate merchandising, using that word in its ordinary sense. The commodities clause of the commerce act <sup>9</sup> forbids any common carrier from transporting, except timber and the manufactured products thereof, any article or commodity manufactured, mined or produced by it or under its authority, or in which it may have any interest, except those intended for its use in the conduct of its transportation business. This provision generally operates to prevent common carriers from engaging in any business except that of transportation. The Act to Regulate Commerce as amended names the kinds of carriers subject thereto. There are carriers not subject to that act, and such carriers might therefore be subject to the provisions

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9.—Act to Regulate Commerce as amended, section 1.

of the Clayton law against price discrimination and tying contracts.

The Interstate Commerce Commission under section 11 of the Clayton law is given jurisdiction to enforce sections 2, 3, 7 and 8 thereof wherever they apply to common carriers. There is no limitation as to the kinds of common carriers affected, and therefore the jurisdiction of the Interstate Commerce Commission under these sections is not confined to such carriers as are subject to the Acts to Regulate Commerce, but is broadened so as to include all common carriers who are such under the common law definition. All common law common carriers may be affected by these four sections, even if they are not otherwise subject to the jurisdiction of the Interstate Commerce Commission. For further discussion of the manner in which these sections are enforced see the titles "Inhibitions of the Clayton law" and "Commission Procedure" herein.

Section 7 expressly forbids the elimination of competition through stock ownership by one corporation in a competing corporation, or by one corporation in two or more corporations which compete among themselves. This applies to carriers. The section provides that its terms do not prevent the ownership of stock for investment only, nor the formation of or ownership of stock in subsidiary corporations for the actual carrying on of natural or legitimate branches or extensions of the business of the parent company. The section also expressly provides that nothing therein contained shall be construed to prohibit any common carrier subject to "the laws to regulate commerce" from aiding in the construction of branch or short lines which are feeders to the main line of the company, nor to prevent such carrier from owning stock in such lines or in extending its main line



through the medium of the acquisition of stock. In view of the fact that common carriers frequently have duties to perform merely incidental to transportation, which may well be performed by subsidiary corporations, and in view of the character of the language used in the section, we believe common carriers may own stock in subsidiary corporations other than branch lines.

Section 8 provides that no person shall at the same time be a director in two corporations if elimination of competition by agreement between them would constitute a violation of any of the Anti-trust laws, but declares that this provision shall not apply to "common carriers subject to the Act to Regulate Commerce, approved February 4, 1887." Note that this language means railroads only, for they were the only common carriers subject to the original act to regulate commerce which was approved February 4th, 1887. In other places in the Clayton law in speaking of common carriers they are mentioned as "subject to the laws to regulate commerce"<sup>10</sup> and as "every \* \* \* corporation engaged in commerce as a common carrier"<sup>11</sup> and "common carrier engaged in commerce."<sup>12</sup> It seems that in limiting the application of interlocking provisions to such common carriers as were subject to the Act to Regulate Commerce approved February 4th, 1887, Congress chose definite language for a definite purpose. We therefore conclude that the prohibition against interlocking directors is effective as to all common carriers in interstate commerce, except railroads.

Section 10 specifically regulates dealings in securi-

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10.—Section 7, paragraph 4.

11.—Section 9, paragraph 1.

12.—Section 10, paragraph 1.

ties, supplies and other articles of commerce amounting in the aggregate to more than \$50,000 in any one year, between a common carrier "engaged in commerce" and another corporation, firm, or partnership when the common carrier has on its board of directors or as its president, manager, purchasing officer, or agent in the particular transaction, any person who is at the same time a director, manager, purchasing or selling officer of, or who is substantially interested in, such other concern. Such transactions cannot be carried on unless made after competitive bidding under regulations to be prescribed by the Interstate Commerce Commission. No bids shall be received unless the name and address of the bidder, or its directors, officers and general managers, if a corporation, or members, if a firm, be given with the bid. Penalties are prescribed for any attempt to prevent free and fair competition among the bidders, and every common carrier having any such transaction or making such purchases is required to file a full and detailed statement of the transaction, showing the manner of bidding, who were the bidders, their names and addresses, with the Interstate Commerce Commission, and the Commission is directed, if it has reason to believe the law has been violated, to transmit all papers and documents and its findings in relation thereto to the Attorney General. This section is not limited to common carriers subject to the Act to Regulate Commerce, but applies to all common carriers "engaged in commerce." A fine not exceeding \$25,000 shall be paid by any common carrier violating this section, and every director, agent, manager or officer who has knowingly voted for or directed the act constituting the violation, or aided or abetted shall be deemed guilty of a misdemeanor and fined

not exceeding \$5,000 or imprisoned not more than one year, or both.

Embezzlement by any president, director, officer or manager of any firm, association or corporation engaged in commerce as a common carrier, is made a felony punishable by a fine of not less than \$500 or imprisonment from one to ten years, or both. It is provided in the section that nothing therein shall take away or impair the jurisdiction of the State Courts and that a judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to prosecution in the Federal Courts for the same act or acts.

The right to sue for injunctive relief given to any person for violations of the Anti-trust laws shall not be construed to give such person the right to obtain such relief against common carriers "subject to the provisions of the Act to Regulate Commerce approved February 4, 1887," in respect to any matter "subject to the regulation or other jurisdiction of the Interstate Commerce Commission." But the Interstate Commerce Commission has no jurisdiction to enforce the Sherman law as to common carriers. Therefore it would appear that individuals may bring suits to prevent carriers from filing with the Interstate Commerce Commission rates made by agreement between the carriers. The Supreme Court has held <sup>13</sup> that associations of railroads that made rates by agreement were combinations in restraint of trade in violation of the Sherman law.

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13.—Trans-Missouri Freight Association case, 166 U. S. 290.

## **AMENABILITY OF PERSONS, AS DISTINGUISHED FROM CORPORATIONS, TO THE LAWS.**

### **1. Sherman Law.**

The Sherman law provides that the word "person" or "persons" wherever used shall be deemed to include corporations and associations existing under the laws of the United States, or of any Territory, State or foreign country. The Sherman law does not contain the word "corporation" in any other place, and is therefore applicable to persons, including partnerships, and corporations or associations with or without shares of capital stock and for profit or not for profit.

### **2. Clayton Law.**

The Clayton law, which is considered an amendment of the Sherman law, defines "person" or "persons" in the identical language in which those words are defined in the Sherman law. The application of the Clayton law therefore is as broad as that of the Sherman law, unless limited elsewhere in the act.

#### **(a) AS TO PERSONS.**

Persons are subject to the provisions inhibiting price discrimination, tying contracts and interlocking. They are also given the right to recover three-fold damages for injuries sustained by reason of the violation of the law. Decree in any suit by or on behalf of the United States under the Anti-trust laws finding a violation thereof shall be *prima facie* evidence against the defendant therein in any suit or proceeding brought by another party against the defendant under said laws. This provision is available either on behalf of or against persons. A president, director, officer or manager of a common carrier cor-

poration who embezzles the moneys thereof shall be deemed guilty of a felony punishable under Federal as well as State laws. Punishment is also provided for every director, agent, manager or officer of a common carrier knowingly violating the regulatory provisions with reference to the relations between a common carrier and any person or corporation with which more than \$50,000 worth of business is done in any one year. "Persons and partnerships" are subject to complaint by the Commissions or Board for violating any of the provisions of sections 2, 3, 7 and 8 of the law and are punishable by contempt proceedings for failure or refusal to obey any order of the Court entered in a proceeding instituted therein by the Commissions or Board. A violation of the penal provisions of the Anti-trust laws by a corporation shall be deemed to be also that of the individual officers, directors or agents thereof who have authorized, ordered or done any of the acts constituting in whole or in part such violation. Any person shall be entitled to have injunctive relief in any Federal Court having jurisdiction against threatened loss or damage by a violation of the Anti-trust laws.

Persons violating the express inhibitions of the law contained in sections 2, 3, 7 and 8 are not criminally liable therefor.

A private banker having deposits, capital, surplus and undivided profits aggregating more than \$5,000,000 is not eligible to be a director in any national bank, nor is any private banker eligible to be a director in any national bank in a city of more than 200,000 inhabitants. All other interlocking inhibitions are also necessarily applicable to persons, although aimed at certain classes of corporations.

Neither labor, agricultural or horticultural organi-

zations not for profit, nor the members thereof shall be held to be illegal combinations or conspiracies in restraint of trade under the Anti-trust laws.

(b) AS TO CORPORATIONS.

The provisions of the Clayton law making stock ownership by one corporation in another illegal, either in a competing corporation or in two or more corporations competing with each other, where commerce is thereby restrained or a tendency to monopolize is created, apply to corporations only.

Corporations are subject to the provisions condemning price discrimination, tying contracts, stock ownership and interlocking, but no criminal penalties are provided for violation thereof. Such violations subject corporations to actions for threefold damages by persons injured thereby. Corporations may own stock in other corporations as an investment only and may own the stock of subsidiary companies formed for the actual carrying on of their immediate lawful business or the natural and legitimate branches or extensions thereof when competition is not substantially lessened thereby.

Common carriers may own stock in short or branch line companies when no substantial competition is thereby suppressed. Decree in any suit by or on behalf of the United States under the Anti-trust laws finding a violation thereof shall be *prima facie* evidence against the defendant therein in any suit or proceeding brought by another party against the defendant under said laws. This provision is available either on behalf of or against corporations. The stock ownership provisions do not make unlawful any lawful stock ownership existing at the time the law became effective.

Common carriers interlocking with supply, con-

struction and financial concerns with which they do more than \$50,000 worth of business in any one year are subject to regulation by the Interstate Commerce Commission in respect of such business, and to criminal penalties for violation of the section governing such regulation.

Corporations are subject to the powers and process of the Commissions or Board to enforce compliance with the laws and may be proceeded against in equity by the government to prevent and restrain violation thereof. Any corporation may in proper cases have injunctive relief against threatened loss or damage by a violation of the Anti-trust laws.

### **3. Trade Commission Law.**

Section 5 of the Trade Commission law empowers the Commission to prevent "persons, partnerships or corporations, except banks and common carriers," from using unfair methods of competition. Necessarily, contempt proceedings and penalties are prescribed against corporations in order to make this power effective. But, as elsewhere stated, no crime either against persons or corporations is predicated upon any use of unfair methods of competition, nor is any private right of action for damages given by this law to any person who has suffered damages by the use of unfair methods of competition.

The word "corporation" is defined in this law to mean any company or association for profit, incorporated or unincorporated, with or without shares of capital stock, except partnerships.

The inquisitorial powers of the Trade Commission enumerated particularly in section 6 are all directed against corporations and not against persons. The power to investigate, to examine books, records, documents, etc., would seem by these pro-

visions to be limited to the books, records, documents, etc., of corporations: Incidental to this power the question will naturally arise in many instances as to whether or not certain papers and documents are the property of the corporation or of the individual officer or agent thereof. But it seems clear that records and documents which are the property of individuals are not subject to the powers of the Commission. The constitutional power of Congress to regulate interstate commerce may be exercised to the same extent over persons as over corporations, subject to the limitations contained in the fourth amendment concerning searches and seizures and the fifth amendment concerning self-incrimination. However, it seems reasonably clear from a consideration of the entire law that Congress intended to confine the Commission's inquisitorial powers to corporations only.

#### **SUITS FOR DAMAGES OR FOR INJUNCTION UNDER THESE LAWS.**

There is nothing in the Trade Commission law in regard to suits for damages by private persons. This does not mean, however, that a person injured by violation of the rule against unfair methods of competition is necessarily deprived of the right to recover damages resulting therefrom. The Supreme Court must determine the legal question involved. Whether the Court will hold that the Trade Commission must act primarily as to the matters and things within its jurisdiction, as it has held the Interstate Commerce Commission must act with reference to carriers,<sup>14</sup> is doubtful.

Section 4 of the Clayton law gives any person in-

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14.—*Texas & Pacific Ry. Co. vs. Abilene Cotton Oil Co.*, 204 U. S. 426; *Interstate Commerce Commission vs. Illinois Central R. R. Co.*, 215 U. S. 452.



jured in his business or property by reason of anything forbidden in the Anti-trust laws the right to sue therefor in any District Court of the United States in the district in which the defendant resides, is found or has an agent, without respect to the amount in controversy, and provides that the person suing shall recover threefold damages, costs of suit and a reasonable attorney's fee. This provision applies to the Clayton law a similar measure of damage to that embodied in section 7 of the Sherman law. Persons, therefore, injured by price discrimination, tying contracts, interlocking directors or stock ownership may recover threefold the damages occasioned thereby. The Courts likewise must decide as to whether or not such action will lie before the violation complained of has been passed upon by the Trade Commission.

Section 5 of the Clayton law provides that in any suit brought under the Anti-trust laws by any private person against one who has been a defendant in a criminal or equity proceeding by the United States to enforce the Anti-trust laws, the decree or judgment shall be *prima facie* evidence against such defendant to the extent that it would operate as an estoppel as between the parties thereto. In other words, if one has been found guilty in a government suit of violating the Anti-trust laws, the judgment or decree would be presumptive evidence of the fact of violation. The plaintiff in an action for damages against such person would still have to show injury occasioned by the wrongful act.

The second paragraph of the section provides that the statute of limitations applicable to private rights of action under the Anti-trust laws shall not run as to any act complained of in a suit by the government under such laws, during the pendency of such suit.

That is, the time consumed in the government suit is added to the regular period of three years in determining the time in which a suit may be brought for the recovery of damages.

Section 16 of the Clayton law gives any person, firm or corporation the right to sue for injunctive relief against threatened loss or damage by violation of the Anti-trust laws, including sections 2, 3, 7 and 8 of the Clayton law, under the same conditions as injunctive relief in other matters is provided for in courts of equity. Provision is made for temporary injunction upon the filing of proper bond. This section was passed in view of certain decisions construing the Sherman law to the effect that the Attorney General alone could bring suits in equity to restrain violations thereof.<sup>15</sup>

The discussion as to the proviso preventing suits for injunction against common carriers is found under the title "Common Carriers."

Suits for injunctions based upon violations of the Sherman and Wilson laws may now be instituted by private persons or corporations and the benefit of the decree in a government suit likewise accrues to private litigants.

## **CRIMINAL PROVISIONS OF THE TWO LAWS.**

### **1. Trade Commission Law.**

Unfair methods of competition which are declared unlawful are not made criminal. There is no penalty imposed for a failure to obey an order of the Commission to cease and desist from using an unfair method of competition. Neglect or refusal to attend and testify or answer any lawful inquiry or produce

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15.—National Fireproofing Company vs. Mason Builders' Association, 169 Fed. 259, and cases cited.

documentary evidence is made an offense punishable by fine, imprisonment, or both. Wilfully making any false report that the Commission may require is made an offense punishable by fine, imprisonment for not more than three years, or both. This offense applies only to corporate representatives, because the Commission has power to order reports from corporations only. Wilfully making or causing to be made any false entry in any account, record or memorandum of a corporation, or wilfully failing to make, or causing to be made, full, true or correct entries in such accounts of all facts appertaining to the business of such corporation, or wilfully removing out of the jurisdiction of the United States, or wilfully mutilating, altering or falsifying any documentary evidence of such corporation, or wilfully refusing to submit to the Commission for inspection and copying any such documentary evidence, is made an offense punishable in the same way.

An officer or employee of the Commission who makes public information without authority shall be guilty of a misdemeanor.

## **2. Clayton Law.**

Violations of the provisions of the Clayton law against price discrimination, tying contracts, stock ownership and interlocking, are not made criminal offenses. No penalty is imposed for failure to obey an order of the Commission or Board "to cease and desist from such violations and divest itself of the stock held or rid itself of the directors chosen."

Embezzlement by a president, director, officer or manager of any common carrier engaged in interstate or foreign commerce, whether or not subject to the Acts to Regulate Commerce, is made a felony. But a judgment of conviction or acquittal on the

merits under the laws of any State bars any prosecution under the Clayton law for the same act.

Any common carrier violating the provisions regulating its relations with supply, construction or financial concerns, and every director, agent, manager, or officer of such common carrier who knowingly voted for or directed the violation, shall be deemed guilty of a misdemeanor and subjected to fine or imprisonment, or both. This language apparently applies to persons who are common carriers as well as to corporations. The law expressly imposes these penal provisions upon any person therein described who shall directly or indirectly do or attempt to do anything to prevent any bidding, or to prevent free and fair competition among bidders or those desiring to bid, for contracts with common carriers, in interlocking cases where section 10 of the law regulates such bidding.

Whenever a corporation shall violate any of the penal provisions of the Anti-trust laws such violation shall be deemed to be that of the individual directors, officers or agents of such corporations who shall have authorized or done any of the acts constituting in whole or in part such violation. And such violation shall be deemed a misdemeanor punishable by fine or imprisonment, or both.

It is to be especially noted that there are no criminal penalties imposed against persons, partnerships, corporations or their officers, agents, or directors for using unfair methods of competition, or for price discrimination, tying contracts, stock ownership or interlocking in violation of either of these two laws.

**DEFECTS AND POSSIBLE AMENDMENTS.**

These comments with reference to defects in and possible amendments to the law are made before the organization or appointment of the Commission.

**1. Commission Has No Authority to Make Report or to Enter Order When Favorable to Person or Corporation Complained Against.**

No provision is contained in the Trade Commission or Clayton law requiring the Trade Commission to make a report or finding of facts or to enter any order in the event its conclusions are favorable to the business against which a proceeding has been instituted. It would seem that such report, finding and order might be authorized or even directed to be made by the Commission and be given the same force and effect as an unfavorable report, finding or order.

**2. Commission Might Be Empowered to Recommend Rule of Conduct for the Future.**

The Trade Commission is given no power to establish or enforce any rule of conduct for the future. Section 6 (e) makes it the duty of the Commission

"upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust Acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law."

This provision in a limited way looks toward establishing guides for the future conduct of business. The Commission, however, can do nothing more than "make recommendations," and such recommendations apply only to "readjustment of the

business of any corporation alleged to be violating the antitrust Acts." Putting constitutional questions aside and assuming power in Congress to legislate further, it would seem to be helpful in the solution of many difficult problems which are constantly arising in business if the Commission were given at least enough power to enable it to put the stamp of approval upon plans for the conduct of any proposed new business, or combinations or associations of old businesses intending to consolidate or co-operate, if full and complete information concerning the same and the proposed conduct thereof be first given. The power of the Commission in any such case should be limited to the recommendation or approval of such plans for future action as might be agreed upon by the Commission and all parties concerned after full hearing. Such power to make recommendations for or give approval to future conduct, however, should be merely permissive and should have the effect of authorizing the plans to be carried out only so long as the parties desired, or the Commission believed the law was not being violated. All acts done in good faith under such recommendations or approval should be protected against liability under the laws. Wherein would lie the evil in an immunity which would be available as a defense only if the recommendations had been made or approval given after full hearing open to anyone concerned and the plans of operation thereunder had been carried out in the utmost good faith?

### **3. Commission Might Be Authorized to Permit Combinations for Furtherance of Foreign Trade.**

The problems now existing in connection with the foreign trade of the United States and empha-

sized by the European war seem to make it desirable that power be vested in the Trade Commission to authorize associations or combinations of merchants, manufacturers or traders of the United States properly to eliminate competition among the members thereof to the end that they will be thus able to meet the competition of similar bodies now lawfully existing in foreign countries.

**4. Federal Reserve Board Lacks Power to Enforce Provisions of Clayton Law, Resulting in Discrimination Against All Member Banks.**

It is the duty of the Federal Reserve Board to enforce the provisions of the Clayton law wherein applicable to banks. It is directed to enforce the provisions thereof against stock ownership and interlocking, but neither the Trade Commission law, the Clayton law nor the Federal Reserve law makes any provision for the Reserve Board to hold hearings, subpoena witnesses or require the production of documentary evidence. With these limitations on its power it undoubtedly will be difficult, if not impossible, in many cases for the Board to perform its duty in the premises. As the Reserve Board has power to obtain information from banks which are members of the Federal Reserve System,<sup>16</sup> but has no jurisdiction over State banks which are not member banks, or over private bankers, the absence of the power suggested is a discrimination in favor of State banks and private bankers who are not members of the Federal Reserve System, and may often result in the existence of known violations of the law, with no power to prevent them.

**Rush C. Butler,  
Cornelius Lynde.**

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16.—The Federal Reserve Act, section 9.

## **FEDERAL TRADE COMMISSION LAW.**

[PUBLIC—No. 203—63D CONGRESS.]

[H. R. 15613.]

An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes.

### **FEDERAL TRADE COMMISSION CREATED.**

1. SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That a commission is hereby created and established, to be known as the Federal Trade Commission (hereinafter referred to as the commission), which shall be composed of five commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from the date of the taking effect of this Act, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. The commission shall choose a chairman from its own membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

The commission shall have an official seal, which shall be judicially noticed.



**SALARIES—SECRETARY AND EMPLOYEES.**

2. SEC. 2. That each commissioner shall receive a salary of \$10,000 a year, payable in the same manner as the salaries of the judges of the courts of the United States. The commission shall appoint a secretary, who shall receive a salary of \$5,000 a year, payable in like manner, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

**APPOINTMENTS UNDER CIVIL SERVICE AND EXCEPTIONS.**

3. With the exception of the secretary, a clerk to each commissioner, the attorneys, and such special experts and examiners as the commission may from time to time find necessary for the conduct of its work, all employees of the commission shall be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the commission and by the Civil Service Commission.

All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the commission.

Until otherwise provided by law, the commission may rent suitable offices for its use.

The Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the commission.

**COMMISSION SUCCEEDS BUREAU OF CORPORATIONS.**

4. SEC. 3. That upon the organization of the commission and election of its chairman, the Bureau of Corporations and the offices of Commissioner and Deputy Commissioner of Corporations shall cease to exist; and all pending investigations and proceedings of the Bureau of Corporations shall be continued by the commission.

All clerks and employees of the said bureau shall be transferred to and become clerks and employees of the commission at their present grades and salaries. All records, papers, and property of the said bureau shall become records, papers and property of the commission, and all unexpended funds and appropriations for the use and maintenance of the said bureau, including any allotment already made to it by the Secretary of Commerce from the contingent appropriation for the Department of Commerce for the fiscal year nineteen hundred and fifteen, or from the departmental printing fund for the fiscal year nineteen hundred and fifteen, shall become funds and appropriations available to be expended by the commission in the exercise of the powers, authority, and duties conferred on it by this Act.

#### OFFICE IN WASHINGTON—MAY ACT ELSEWHERE.

5. The principal office of the commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

#### COMMERCE DEFINED.

6. SEC. 4. That the words defined in this section shall have the following meaning when found in this Act, to-wit:

"Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

#### CORPORATION DEFINED.

7. "Corporation" means any company or association incorporated or unincorporated, which is organized to carry on business for profit and has shares of capital or capital stock, and any company or association, incorporated or unincorporated, without shares of capital or capital stock, except partnerships, which is organized to carry on business for its own profit or that of its members.

**DOCUMENTARY EVIDENCE DEFINED.**

8. "Documentary evidence" means all documents, papers, and correspondence in existence at and after the passage of this Act.

**ACTS TO REGULATE COMMERCE DEFINED.**

9. "Acts to regulate commerce" means the Act entitled "An Act to regulate commerce," approved February fourteenth, eighteen hundred and eighty-seven, and all Acts amendatory thereof and supplementary thereto.

**ANTI-TRUST ACTS DEFINED.**

10. "Antitrust acts" means the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety; also the sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August twenty-seventh, eighteen hundred and ninety-four; and also the Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen.

**UNFAIR METHODS OF COMPETITION ARE UNLAWFUL.**

11. SEC. 5. That unfair methods of competition in commerce are hereby declared unlawful.

**COMMISSION EMPOWERED TO PREVENT USE OF UNFAIR METHODS.**

12. The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce.

**PROCEDURE BEFORE COMMISSION AND IN COURT TO ENFORCE COMMISSION'S ORDER.**

13. Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or

is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of

the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

#### **PROCEDURE IN COURT TO SET ASIDE COMMISSION'S ORDER.**

14. Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

**CIRCUIT COURT OF APPEALS EXCLUSIVE JURISDICTION.**

**15.** The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

**EXPEDITION OF COURT PROCEEDINGS. NO ORDER OR JUDGMENT TO RELIEVE FROM LIABILITY.**

**16.** Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or judgment of the court to enforce the same shall in any wise relieve or absolve any person, partnership, or corporation from any liability under the antitrust acts.

**SERVICE OF PROCESS.**

**17.** Complaints, orders, and other processes of the commission under this section may be served by anyone duly authorized by the commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person, partnership, or corporation; or (c) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

**GENERAL INVESTIGATING POWER OVER CORPORATIONS EXCEPT BANKS AND COMMON CARRIERS.**

**18. SEC. 6.** That the commission shall also have power—

(a) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the Act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

**POWER TO REQUIRE REPORTS.**

**19.** (b) To require, by general or special orders, corporations engaged in commerce, excepting banks, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the commission may prescribe, and shall be filed with the commission within such reasonable period as the commission may prescribe, unless additional time be granted in any case by the commission.

**POWER TO INVESTIGATE CARRYING OUT OF ANTI-TRUST DECREES.**

**20.** (c) Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust Acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the commission.

**INVESTIGATION OF VIOLATIONS OF ANTI-TRUST LAWS.**

**21.** (d) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts by any corporation.

**POWER TO RECOMMEND READJUSTMENT OF BUSINESS.**

**22.** (e) Upon the application of the Attorney General to investigate and make recommendations for the readjustment of

the business of any corporation alleged to be violating the anti-trust Acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

#### **POWER TO MAKE REPORTS.**

**23.** (f) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

#### **POWER TO CLASSIFY CORPORATIONS.**

**24.** (g) From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this Act.

#### **POWER TO INVESTIGATE FOREIGN TRADE CONDITIONS.**

**25.** (h) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

#### **COMMISSION TO ACT AS MASTER IN CHANCERY.**

**26.** Sec. 7. That in any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts, the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation



thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require.

#### **GOVERNMENT RECORDS AVAILABLE TO COMMISSION.**

**27. SEC. 8.** That the several departments and bureaus of the Government when directed by the President shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this Act, and shall detail from time to time such officials and employees to the commission as he may direct.

#### **COMMISSION TO HAVE ACCESS TO CORPORATE RECORDS.**

**28. SEC. 9.** That for the purposes of this Act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

#### **COMMISSION MAY REQUIRE ATTENDANCE OF WITNESSES AND PRODUCTION OF DOCUMENTARY EVIDENCE.**

**29.** Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

**DISTRICT COURTS MAY ENFORCE ABOVE REQUIREMENTS.**

**30.** Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

**MANDAMUS PROCEEDINGS AUTHORIZED.**

**31.** Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the commission made in pursuance thereof.

**TESTIMONY MAY BE TAKEN BY DEPOSITION.**

**32.** The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

**WITNESS FEES.**

**33.** Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

**IMMUNITY.**

**34.** No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpoena of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

**FAILURE TO TESTIFY CRIMINAL OFFENSE.**

**35.** Sec. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

**FALSIFICATION, ETC., OF CORPORATE RECORDS A CRIMINAL OFFENSE.**

**36.** Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this Act, or who shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts, and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corpora-

tion in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than \$1,000 nor more than \$5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

#### **PENALTY FOR FAILURE TO FILE REPORTS.**

**37.** If any corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

#### **UNAUTHORIZED PUBLICITY BY EMPLOYEE OF COMMISSION AN OFFENSE.**

**38.** Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

#### **ANTI-TRUST ACTS AND ACTS TO REGULATE COMMERCE NOT MODIFIED.**

**39.** SEC. 11. Nothing contained in this Act shall be construed to prevent or interfere with the enforcement of the provision of the antitrust Acts or the Acts to regulate commerce, nor shall anything contained in the Act be construed to alter, modify, or repeal the said antitrust Acts or the Acts to regulate commerce or any part or parts thereof.

Approved, September 26, 1914.

**CLAYTON LAW**  
**OR**  
**SUPPLEMENTAL ANTI-TRUST LAW.**

[PUBLIC—No. 212—63D CONGRESS.]  
[H. R. 15657.]

An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes.

**ANTI-TRUST LAWS DEFINED.**

**40.** SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That "antitrust laws," as used herein, includes the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety; sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen; and also this Act.

**COMMERCE DEFINED.**

**41.** "Commerce," as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Colum-

bia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That nothing in this Act contained shall apply to the Philippine Islands.

#### **PERSON DEFINED.**

**42.** The word "person" or "persons" wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

#### **PRICE DISCRIMINATION UNLAWFUL.**

**43. SEC. 2.** That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: *Provided*, That nothing herein contained shall prevent discrimination in prices between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

#### **TYING CONTRACTS UNLAWFUL.**

**44. SEC. 3.** That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United

States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

### **THREE-FOLD DAMAGES RECOVERABLE BY PERSON INJURED.**

**45. SEC. 4.** That any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

### **FINAL DECREE PRIMA FACIE EVIDENCE IN ANOTHER PROCEEDING.**

**46. SEC. 5.** That a final judgment or decree hereafter rendered in any criminal prosecution or in any suit or proceeding in equity brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any suit or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, This section shall not apply to consent judgments or decrees entered before any testimony has been taken: *Provided further*, This section shall not apply to consent judgments or decrees rendered in criminal proceedings or suits in equity, now pending, in which the taking of testimony has been commenced but has not been concluded, provided such judgments or decrees are rendered before any further testimony is taken.

**STATUTE OF LIMITATIONS INOPERATIVE AGAINST  
PRIVATE CLAIMS PENDING GOVERNMENT SUIT.**

**47.** Whenever any suit or proceeding in equity or criminal prosecution is instituted by the United States to prevent, restrain or punish violations of any of the antitrust laws, the running of the statute of limitations in respect of each and every private right of action arising under said laws and based in whole or in part on any matter complained of in said suit or proceeding shall be suspended during the pendency thereof.

**EXEMPTION OF LABOR, HORTICULTURAL AND AGRICULTURAL ORGANIZATIONS AND MEMBERS.**

**48.** SEC. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

**CORPORATE STOCK OWNERSHIP IN COMPETING CORPORATION UNLAWFUL.**

**49.** SEC. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

**HOLDING COMPANY OWNING STOCK OF COMPETING CORPORATIONS UNLAWFUL.**

**50.** No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of



proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

#### **OWNERSHIP OF STOCK FOR INVESTMENT ONLY, PERMITTED.**

**51.** This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

#### **COMMON CARRIERS PERMITTED TO OWN STOCK IN BRANCH LINE COMPANIES.**

**52.** Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other such common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

**LAWFUL STOCK OWNERSHIP NOT IMPAIRED.**

**53.** Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

**INTERLOCKING BETWEEN BANKS, ONE OF WHICH HAS \$5,000,000 RESOURCES, UNLAWFUL.**

**54.** SEC. 8. That from and after two years from the date of the approval of this Act no person shall at the same time be a director or other officer or employee of more than one bank, banking association or trust company, organized or operating under the laws of the United States, either of which has deposits, capital, surplus, and undivided profits aggregating more than \$5,000,000; and no private banker or person who is a director in any bank or trust company, organized and operating under the laws of a State, having deposits, capital, surplus, and undivided profits aggregating more than \$5,000,000, shall be eligible to be a director in any bank or banking association organized or operating under the laws of the United States. The eligibility of a director, officer, or employee under the foregoing provisions shall be determined by the average amount of deposits, capital, surplus, and undivided profits as shown in the official statements of such bank, banking association, or trust company filed as provided by law during the fiscal year next preceding the date set for the annual election of directors, and when a director, officer, or employee has been elected or selected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter under said election or employment.

**INTERLOCKING BETWEEN BANKS IN CITIES OF OVER 200,000 POPULATION PROHIBITED.**

**55.** No bank, banking association or trust company, organized or operating under the laws of the United States, in any city or incorporated town or village of more than two hundred thousand inhabitants, as shown by the last preceding decennial census of the United States, shall have as a director or other officer or employee any private banker or any director or other

officer or employee of any other bank, banking association or trust company located in the same place: *Provided*, That nothing in this section shall apply to mutual savings banks not having a capital stock represented by shares: *Provided further*, That a director or other officer or employee of such bank, banking association, or trust company may be a director or other officer or employee of not more than one other bank or trust company organized under the laws of the United States or any State where the entire capital stock of one is owned by stockholders in the other: *And provided further*, That nothing contained in this section shall forbid a director of class A of a Federal reserve bank, as defined in the Federal Reserve Act from being an officer or director or both an officer and director in one member bank.

**INTERLOCKING BETWEEN COMPETING CORPORATIONS OF MORE THAN \$1,000,000 RESOURCES UNLAWFUL.**

**56.** That from and after two years from the date of the approval of this Act no person at the same time shall be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than \$1,000,000, engaged in whole or in part in commerce, other than banks, banking associations, trust companies and common carriers subject to the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws. The eligibility of a director under the foregoing provision shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corporation next preceding the election of directors, and when a director has been elected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter.

**ELIGIBILITY OF INTERLOCKING DIRECTORS.**

**57.** When any person elected or chosen as a director or officer or selected as an employee of any bank or other corporation sub-

ject to the provisions of this Act is eligible at the time of his election or selection to act for such bank or other corporation in such capacity his eligibility to act in such capacity shall not be affected and he shall not become or be deemed amenable to any of the provisions hereof by reason of any change in the affairs of such bank or other corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date of his election or employment.

#### **EMBEZZLEMENT BY COMMON CARRIER OFFICER A FELONY.**

**58. SEC. 9.** Every president, director, officer or manager of any firm, association or corporation engaged in commerce as a common carrier, who embezzles, steals, abstracts or willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, securities, property or assets of such firm, association or corporation, arising or accruing from, or used in, such commerce, in whole or in part, or willfully or knowingly converts the same to his own use or to the use of another, shall be deemed guilty of a felony and upon conviction shall be fined not less than \$500 or confined in the penitentiary not less than one year nor more than ten years, or both, in the discretion of the court.

#### **CONVICTION OR ACQUITTAL IN STATE COURT ON SAME OFFENSE BARS PROSECUTION IN FEDERAL COURT.**

**59.** Prosecutions hereunder may be in the district court of the United States for the district wherein the offense may have been committed.

That nothing in this section shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof; and a judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts.

#### **REGULATION PRESCRIBED FOR COMMON CARRIER INTERLOCKING WITH CONSTRUCTION, SUPPLY OR FINANCIAL CONCERNS.**

**60. SEC. 10.** That after two years from the approval of this Act no common carrier engaged in commerce shall have any

dealings in securities, supplies or other articles of commerce, or shall make or have any contracts for construction or maintenance of any kind, to the amount of more than \$50,000, in the aggregate, in any one year, with another corporation, firm, partnership or association when the said common carrier shall have upon its board of directors or as its president, manager or as its purchasing or selling officer, or agent in the particular transaction, any person who is at the same time a director, manager, or purchasing or selling officer of, or who has any substantial interest in, such other corporation, firm, partnership or association, unless and except such purchases shall be made from, or such dealings shall be with, the bidder whose bid is the most favorable to such common carrier, to be ascertained by competitive bidding under regulations to be prescribed by rule or otherwise by the Interstate Commerce Commission. No bid shall be received unless the name and address of the bidder or the names and addresses of the officers, directors and general managers thereof, if the bidder be a corporation, or of the members, if it be a partnership or firm, be given with the bid.

#### **PENALTY FOR AVOIDING REGULATIONS.**

**61.** Any person who shall, directly or indirectly, do or attempt to do anything to prevent anyone from bidding or shall do any act to prevent free and fair competition among the bidders or those desiring to bid shall be punished as prescribed in this section in the case of an officer or director.

#### **FURTHER REGULATIONS PRESCRIBED.**

**62.** Every such common carrier having any such transactions or making any such purchases shall within thirty days after making the same file with the Interstate Commerce Commission a full and detailed statement of the transaction showing the manner of the competitive bidding, who were the bidders, and the names and addresses of the directors and officers of the corporations and the members of the firm or partnership bidding; and whenever the said commission shall, after investigation or hearing, have reason to believe that the law has been violated in and about the said purchases or transactions it shall transmit all papers and documents and its own views or findings regarding the transaction to the Attorney General.

**VIOLATION OF REGULATING PROVISIONS A MIS-  
DEMEANOR.**

**63.** If any common carrier shall violate this section it shall be fined not exceeding \$25,000; and every such director, agent, manager or officer thereof who shall have knowingly voted for or directed the act constituting such violation or who shall have aided or abetted in such violation shall be deemed guilty of a misdemeanor and shall be fined not exceeding \$5,000, or confined in jail not exceeding one year, or both, in the discretion of the court.

**AUTHORITY TO ENFORCE LAW VESTED IN FEDERAL  
TRADE COMMISSION, INTERSTATE COMMERCE  
COMMISSION AND FEDERAL RESERVE BOARD.**

**64.** Sec. 11. That authority to enforce compliance with sections two, three, seven and eight of this Act by the persons respectively subject thereto is hereby vested: in the Interstate Commerce Commission where applicable to common carriers, in the Federal Reserve Board where applicable to banks, banking associations and trust companies, and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:

**PROCEDURE BEFORE COMMISSION OR BOARD.**

**65.** Whenever the commission or board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections two, three, seven and eight of this Act, it shall issue and serve upon such person a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission or board requiring such person to cease and desist from the violation of the law so charged in said complaint. Any person may make application, and upon good cause shown may be allowed by the commission or board, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission or board. If upon such hearing the commission or board, as the case may be, shall be of

the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this Act, if any there be, in the manner and within the time fixed by said order. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission or board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

#### **PROCEDURE IN COURT TO ENFORCE COMMISSION'S OR BOARD'S ORDER.**

**66.** If such person fails or neglects to obey such order of the commission or board while the same is in effect, the commission or board may apply to the circuit court of appeals of the United States, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission or board. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission or board. The findings of the commission or board as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission or board, the court may order such additional evidence to be taken before the commission or board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper.

The commission or board may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

#### **PROCEDURE IN COURT TO SET ASIDE COMMISSION'S OR BOARD'S ORDER.**

67. Any party required by such order of the commission or board to cease and desist from a violation charged may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission or board be set aside. A copy of such petition shall be forthwith served upon the commission or board, and thereupon the commission or board forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission or board as in the case of an application by the commission or board for the enforcement of its order, and the findings of the commission or board as to the facts, if supported by testimony, shall in like manner be conclusive.

#### **CIRCUIT COURT OF APPEALS JURISDICTION EXCLUSIVE.**

68. The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission or board shall be exclusive.

#### **EXPEDITION OF COURT PROCEEDINGS—NO ORDER OR JUDGMENT TO RELIEVE FROM LIABILITY.**

69. Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or board or the judgment of the court to enforce the same shall in any wise relieve or absolve any person from any liability under the anti-trust Acts.



**SERVICE OF PROCESS.**

**70.** Complaints, orders, and other processes of the commission or board under this section may be served by anyone duly authorized by the commission or board, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person; or (c) by registering and mailing a copy thereof addressed to such person at his principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

**VENUE OF SUITS AGAINST CORPORATIONS.**

**71. SEC. 12.** That any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

**SUBPCENAS MAY RUN INTO ANY DISTRICT.**

**72. SEC. 13.** That in any suit, action, or proceeding brought by or on behalf of the United States subpoenas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or criminal, arising under the antitrust laws may run into any other district: *Provided*, That in civil cases no writ of subpoena shall issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the permission of the trial court being first had upon proper application and cause shown.

**CRIME OF CORPORATION ALSO THAT OF ITS DIRECTORS, OFFICERS AND AGENTS.**

**73. SEC. 14.** That whenever a corporation shall violate any of the penal provisions of the antitrust laws, such violation shall

be deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation, and such violation shall be deemed a misdemeanor, and upon conviction therefor of any such director, officer, or agent he shall be punished by a fine of not exceeding \$5,000 or by imprisonment for not exceeding one year, or by both, in the discretion of the court.

#### **SUITS IN EQUITY BY UNITED STATES AUTHORIZED TO RESTRAIN VIOLATIONS.**

**74. SEC. 15.** That the several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned whether they reside in the district in which the court is held or not, and subpoenas to that end may be served in any district by the marshal thereof.

#### **PERSON MAY ENJOIN THREATENED DAMAGES BY VIOLATIONS.**

**75. SEC. 16.** That any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections two, three, seven and eight of this Act, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage

is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided*, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission.

#### **NO PRELIMINARY INJUNCTION WITHOUT NOTICE.**

**76. SEC. 17.** That no preliminary injunction shall be issued without notice to the opposite party.

#### **NO TEMPORARY RESTRAINING ORDER WITHOUT NOTICE UNLESS IRREPARABLE INJURY SHOWN.**

**77.** No temporary restraining order shall be granted without notice to the opposite party unless it shall clearly appear from specific facts shown by affidavit or by the verified bill that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every such temporary restraining order shall be indorsed with the date and hour of issuance, shall be forthwith filed in the clerk's office and entered of record, shall define the injury and state why it is irreparable and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed ten days, as the court or judge may fix, unless within the time so fixed the order is extended for a like period for good cause shown, and the reasons for such extension shall be entered of record. In case a temporary restraining order shall be granted without notice in the contingency specified, the matter of the issuance of a preliminary injunction shall be set down for a hearing at the earliest possible time and shall take precedence of all matters except older matters of the same character; and when the same comes up for hearing the party obtaining the temporary restraining order shall proceed with the application for a preliminary injunction, and if he does not do so the court shall dissolve the temporary restraining

order. Upon two days notice to the party obtaining such temporary restraining order the opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice may require.

#### **SECTION 263 OF JUDICIARY ACT REPEALED.**

**78.** Section two hundred and sixty-three of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, is hereby repealed.

#### **SECTION 266 OF JUDICIARY ACT NOT AMENDED.**

**79.** Nothing in this section contained shall be deemed to alter, repeal, or amend section two hundred and sixty-six of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven.

#### **INJUNCTION BOND REQUIRED.**

**80.** SEC. 18. That, except as otherwise provided in section 16 of this Act, no restraining order or interlocutory order of injunction shall issue, except upon the giving of security by the applicant in such sum as the court or judge may deem proper, conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby.

#### **INJUNCTION ORDER SHALL BE SPECIFIC.**

**81.** SEC. 19. That every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained, and shall be binding only upon the parties to the suit, their officers, agents, servants, employees, and attorneys, or those in active concert or participating with them, and who shall, by personal service or otherwise, have received actual notice of the same.

**NO INJUNCTION ORDER PERMITTED IN CASES BETWEEN EMPLOYER AND EMPLOYEES, ETC.**

**82. SEC. 20.** That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

**PEACEFUL PERSUASION OF EMPLOYEES NOT TO BE ENJOINED.**

**83.** And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

**DISOBEDIENCE OF COURT ORDER BY CRIMINAL ACT PUNISHABLE.**

**84. SEC. 21.** That any person who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any

district court of the United States or any court of the District of Columbia by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States, or under the laws of any State in which the act was committed, shall be proceeded against for his said contempt as hereinafter provided.

#### PROCEEDINGS IN CONTEMPT CASES.

**85.** SEC. 22. That whenever it shall be made to appear to any district court or judge thereof, or to any judge therein sitting, by the return of a proper officer on lawful process, or upon the affidavit of some credible person, or by information filed by any district attorney, that there is reasonable ground to believe that any person has been guilty of such contempt, the court or judge thereof, or any judge therein sitting, may issue a rule requiring the said person so charged to show cause upon a day certain why he should not be punished therefor, which rule, together with a copy of the affidavit or information, shall be served upon the person charged, with sufficient promptness to enable him to prepare for and make return to the order at the time fixed therein. If upon or by such return, in the judgment of the court, the alleged contempt be not sufficiently purged, a trial shall be directed at a time and place fixed by the court: *Provided, however,* That if the accused, being a natural person, fail or refuse to make return to the rule to show cause, an attachment may issue against his person to compel an answer, and in case of his continued failure or refusal, or if for any reason it be impracticable to dispose of the matter on the return day, he may be required to give reasonable bail for his attendance at the trial and his submission to the final judgment of the court. Where the accused is a body corporate, an attachment for the sequestration of its property may be issued upon like refusal or failure to answer.

#### JURY TRIAL IF DEMANDED.

**86.** In all cases within the purview of this Act such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers, may cause a sufficient number of jurors to be selected and sum-

moned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected and impaneled as upon a trial for misdemeanor; and such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information.

#### **PUNISHMENT—DISTRIBUTION OF FINE.**

**87.** If the accused be found guilty, judgment shall be entered accordingly, prescribing the punishment, either by fine or imprisonment, or both, in the discretion of the court. Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of \$1,000, nor shall such imprisonment exceed the term of six months: *Provided*, That in any case the court or a judge thereof may, for good cause shown, by affidavit or proof taken in open court or before such judge and filed with the papers in the case, dispense with the rule to show cause, and may issue an attachment for the arrest of the person charged with contempt; in which event such person, when arrested, shall be brought before such court or a judge thereof without unnecessary delay and shall be admitted to bail in a reasonable penalty for his appearance to answer to the charge or for trial for the contempt; and thereafter the proceedings shall be the same as provided herein in case the rule had issued in the first instance.

#### **REVIEW PROVIDED FOR CONTEMPT PROCEEDINGS— BAIL.**

**88. SEC. 23.** That the evidence taken upon the trial of any persons so accused may be preserved by bill of exceptions, and any judgment of conviction may be reviewed upon writ of error in all respects as now provided by law in criminal cases, and may be affirmed, reversed, or modified as justice may require. Upon the granting of such writ of error, execution of judgment shall be stayed, and the accused, if thereby sentenced to imprisonment, shall be admitted to bail in such reasonable sum as may be required by the court, or by any justice, or any judge of any district court of the United States or any court of the District of Columbia.

**CONTEMPT PROCEEDINGS NOT APPLICABLE IN CERTAIN CASES.**

**89. SEC. 24.** That nothing herein contained shall be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced within section twenty-one of this Act, may be punished in conformity to the usages at law and in equity now prevailing.

**LIMITATIONS IN CONTEMPT ACTIONS ONE YEAR.**

**90. SEC. 25.** That no proceeding for contempt shall be instituted against any person unless begun within one year from the date of the act complained of; nor shall any such proceeding be a bar to any criminal prosecution for the same act or acts; but nothing herein contained shall affect any proceedings in contempt pending at the time of the passage of this Act.

**CONSTITUTIONAL SAVING CLAUSE.**

**91. SEC. 26.** If any clause, sentence, paragraph, or 'part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not effect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Approved, October 15, 1914.



**SHERMAN LAW**  
**OR**  
**FEDERAL ANTI-TRUST LAW.**

[ACT OF JULY 2, 1890: 26 STAT. 209.]

An Act to protect trade and commerce against unlawful restraints and monopolies.

**CONTRACTS, COMBINATIONS OR CONSPIRACIES IN  
RESTRAINT OF TRADE ILLEGAL.**

**92.** SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.* Every contract combination in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

**MONOPOLIZING OR ATTEMPTING TO MONOPOLIZE  
TRADE A MISDEMEANOR.**

**93.** SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

**CONTRACTS, ETC., IN RESTRAINT OF TRADE ILLEGAL.**

**94. SEC. 3.** Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

**JURISDICTION TO RESTRAIN VIOLATIONS.**

**95. SEC. 4.** That several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

**OTHER PARTIES MAY BE SUMMONED.**

**96. SEC. 5.** Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

**PROPERTY OWNED IN VIOLATION OF LAW MAY BE CONDEMNED.**

**97. SEC. 6.** Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

**INJURED PERSON GIVEN RIGHT TO RECOVER THREE-FOLD DAMAGES.**

**98. SEC. 7.** Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

**PERSON DEFINED.**

**99. SEC. 8.** That the word "person," or "persons" wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

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### **CONTRACTS, ETC., IN RESTRAINT OF IMPORT TRADE ILLEGAL.**

**100. SEC. 73.** That every combination, conspiracy, trust, agreement, or contract, is hereby declared to be contrary to public policy, illegal, and void when the same is made by or between two or more persons or corporations either of whom, as agent or principal, is engaged in importing any article from any foreign country into the United States, and when such combination, conspiracy, trust, agreement, or contract is intended to operate in restraint of lawful trade, or free competition in lawful trade or commerce, or to increase the market price in any part of the United States of any article or articles imported or intended to be imported into the United States, or of any manufacture into which such imported article enters or is intended to enter. Every person who is or shall hereafter be engaged in the importation of goods or any commodity from any foreign country in violation of this section of this act, or who shall combine or conspire with another to violate the same, is guilty of a misdemeanor, and on conviction thereof in any court of the United States such person shall be fined in a sum not less than one hundred dollars and not exceeding five thousand dollars, and shall be further punished by imprisonment, in the discretion of the court, for a term not less than three months nor exceeding twelve months.

### **JURISDICTION TO RESTRAIN VIOLATIONS.**

**101. SEC. 74.** That the several circuit courts of the United States are hereby invested with jurisdiction to prevent and re-

strain violations of section seventy-three of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petitions setting forth the case and praying that such violations shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

#### **OTHER PARTIES MAY BE SUMMONED.**

**102. SEC. 75.** That whenever it shall appear to the court before which any proceeding under the seventy-fourth section of this act may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

#### **PROPERTY OWNED IN VIOLATION OF LAW MAY BE CONDEMNED.**

**103. SEC. 76.** That any property owned under any contract or by any combination, or pursuant to any conspiracy, and being the subject thereof, mentioned in section seventy-three of this act, imported into and being within the United States or being in the course of transportation from one State to another, or to or from a Territory or the District of Columbia, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

#### **INJURED PERSON GIVEN RIGHT TO RECOVER THREE-FOLD DAMAGES.**

**104. SEC. 77.** That any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act,

may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

(Act of August 27, 1894 (28 Stat. 570) as amended by act of February 12, 1913 (37 Stat. 667.)

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